Supreme Court, U.S.
FILED

041355 APR 1 - 2005

OFFICE OF THE CLERK

04-

SUPREME COURT OF THE UNITED STATES

JOHN STANTON

Petitioner

v

DISTRICT OF COLUMBIA COURT OF APPEALS

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

JOHN STANTON
2101 New Hampshire Avenue NW
Washington DC 20009
202-232-5369
Stanton_John@msn.com

QUESTIONS PRESENTED

1. **Should the District of Columbia (DC) Bar Board on Professional Responsibility (BPR) be a full-time professional disciplinary fact-finding agency of members sworn to uphold the Constitution of the United States (US) and paid from appropriations like members of administrative agencies of the government?**

2. **Are lawyers still free to criticize the state of the law?**

3. **Does advocacy for guilty pleas deny the rights to freedom from involuntary self-incrimination and assistance of counsel for defense?**

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iii
Citation, Opinion, Jurisdiction	vii
Constitutional Provisions Involved	viii
Statement of the Case:	
Parties	1
Previous Proceedings	3
Present Proceedings	11
Argument Summary	17
Respondent's Lawless BPR Must Go	18
Any Lawyer should be Free to Criticize Respondent's Rules	23
Advocacy for Guilty Pleas should Not be Permitted, Let Alone Required	26

TABLE OF CONTENTS

	Page
Conclusions	**29**
Appendix:	
Text of 28 October 2004 Order	**1A**
Text of Appended BPR Report	**4A**
Text of 11 January 2005 Order	**30A**

TABLE OF AUTHORITIES

CASES:	**Page(s)**
***Baird v State Bar of Arizona*, 401 US 1, 91 SCt 702 (1971)**	**26**
***Matter of Colson*, 412 A2d 1160 (DC 1979)**	**20**
***District of Columbia v Davis*, 685 A2d 389 (DC 1996)**	**20**
***In re Fogel*, 679 A2d 1052 (DC 1996)**	**21**

TABLE OF AUTHORITIES

CASES:	Page(s)
Gentile v State Bar of Nevada, 501 US 1030, 111 SCt 2720 (1991)	25, 26
Hill v Lockhart, 474 US 52, 106 SCt 366 (1985)	2, 26
Iaea v Sunn, 800 F2d 861 (CA9 1986)	28
Ibanez v Board of Accountancy, 512 US 136, 114 SCt 2084 (1994)	25
McCarthy v United States, 394 US 459, 89 SCt 1166 (1969)	2
Middlesex County Ethics Committee v Garden State Bar Association et al., 457 US 423, 102 SCt 2515 (1982)	29
In re Ruffalo, 390 US 544, 88 SCt 1222 (1968)	20, 21
In re Sawyer, 360 US 622, 79 SCt 1376 (1960)	25
In re Shepherd, DC App 03-BG-1343, 3 March 2005	19
In re Stanton, 470 A2d 272, 281 (DC 1983), *cert denied* 466 US 972, 104 SCt 2347 (1984)	1, 4-6, 11, 12, 20, 22-24

TABLE OF AUTHORITIES

CASES:	Page(s)
Matter of Stanton, 532 A2d 95 (DC 1987)	2, 6, 7, 12, 23
In re Stanton, 589 A2d 425 (DC 1991), *cert denied* 502 US 1098, 112 SCt 1178 (1992)	1, 2, 7, 8, 12, 21, 26, 27
In re Stanton, 682 A2d 655 (DC 1996), *cert denied* 522 US 817, 118 SCt 67 (1997)	1, 8, 9, 13, 20, 22, 24, 25, 27
In re Stanton, 757 A2d 87 (DC 2000), *cert denied* 532 US 943, 121 SCt 1406 (2001)	1-3, 9-11, 18-24, 26, 30
In re Stanton, 860 A2d 369 (DC 2004)	12-17, 21-24
Matter of Thorup, 432 A2d 1221 (DC 1981)	20
United States v Cronic, 466 US 648, 104 SCt 2039 (1984)	27
United States v Crook, 607 F2d 670 (CA5 1979)	2
United States v Estrada, 849 F2d 1304 (CA10 1988)	28

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS, OTHER AUTHORITIES: **Page(s):**

US Constitution:

Amendment I **11, 21, 25**

Amendment V **11, 26**

Amendment VI **27**

DC Administrative Procedure Act, DC Code Sections (§§) 2-501 *et seq* **3**

§ 2-509(e) **3**

§§ 2-510(a)(3)(A), (D) **3**

Federal/DC Superior Court Rules of Criminal Procedure, Rule 11(d) **2**

American Bar Association (ABA) Center for Professional Responsibility, Model Rules for Disciplinary Enforcement:

Rule 18B **18**

Rule 25E **23**

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS, OTHER AUTHORITIES: **Page(s):**

DC Bar Rule XI, §§ 4(a), 4(e)(4), 5(a) **3**

BPR Rules:

BPR Rule 9.2 ..... **3, 9**

BPR Rule 11.3 ..... **3, 18**

Bruce Jackson, *Law and Disorder: Criminal Justice in America*, University of Illinois Press (1984) **27**

Evan Thomas, *The Man to See: Edward Bennett Williams, Ultimate Insider, Legendary Trial Lawyer*, Simon & Schuster (1991) **28**

OPINION, CITATION, JURISDICTION

This petition under US Code § 28-1257 is for review of the 28 October 2004 DC Court of Appeals order denying petitioner's DC Bar reinstatement reported as *In re Stanton*, 860 A2d 369 (DC 2004), made final by the 11 January 2005 order denying rehearing.

CONSTITUTIONAL PROVISIONS INVOLVED

US Constitution, Article I, Section 9

"No . . . *ex post facto* law shall be passed."

US Constitution, Amendment I

"[There] shall [be] no law . . . abridging the freedom of speech."

US Constitution, Amendment V

"No person shall be . . . compelled in any criminal case to be a witness against himself."

"No person shall be . . . deprived of . . . property without due process of law."

US Constitution, Amendment VI

"In all criminal prosecutions the accused shall . . . have the assistance of counsel for his defence."

STATEMENT OF THE CASE

Parties

Petitioner is an attorney suspended from practice since 1983 by respondent DC Court of Appeals for "his view of his role as a lawyer"[1] "in assisting clients with guilty pleas"[2] in criminal prosecutions. Petitioner's view is that in assisting his clients in guilty pleas a lawyer should "negotiate with the government to get the best possible plea, act as an advisor at all times but not as an advocate, [and] assist his client in deciding to waive trial but not in implementing the waiver of trial."[3] In petitioner's view the best guilty plea practice is when the client "after receiving advice has chosen to plead guilty"[4] and "announce[s] his decision to plead guilty in open court by saying, 'Judge, I want to plead guilty,' at the inception of the proceedings."[5]

---

[1] *In re Stanton*, 470 A2d 272, 281 (DC 1983) *cert denied* 466 US 972, 104 SCt 2347 (1984). Respondent found that the "intractability of [petitioner's] views," *Id* at 281, warranted a long suspension.

[2] *In re Stanton*, 757 A2d 87, 88 (DC 2000) *cert denied* 532 US 943, 121 SCt 1406 (2001).

[3] *In re Stanton*, 589 A2d 425, 428 (DC 1991) *cert denied* 502 US 1098, 112 SCt 1178 (1992). In practice petitioner always advised clients whether to accept plea offers but never applied pressure or persuasion in addition to advice when clients were indecisive. In ten years petitioner tried 82 cases for his clients before juries and won total acquittal or exoneration in 29 of them.

[4] *In re Stanton*, 757 A2d at 91.

[5] *In re Stanton*, 682 A2d 655, 657 (DC 1996) *cert denied* 522 US 817, 118 SCt 67 (1997). Petitioner shares the view that "the duty of defense counsel is to make certain that the plea is entered voluntarily," *United*

Respondent DC Court of Appeals interprets the DC Bar disciplinary rules to require that a lawyer "give voice in court to the client's decision to plead guilty"[6] and "advocate for his client's decision to plead guilty"[7] "to convince a judge of the voluntariness of a guilty plea of a client during a Rule 11(d) inquiry."[8] This unique interpretation never before and not yet accepted by any other state or federal court was announced in petitioner's first reinstatement action when respondent "agree[d] with the [BPR] that reinstatement should be denied"[9] because petitioner said he would not "assume the role of an advocate for a client who desired to plead guilty."[10]

Respondent says it "created the [BPR] in the exercise of its inherent authority over members of the legal profession practicing in the District"[11] "to conduct the fact-finding necessary to [its] evaluation of disciplinary matters."[12] Respondent gives deference to BPR findings and recommendations as "entitled to great weight."[13] It

---

States v Crook, 607 F2d 670, 672 (CA5 1979), and he believes this practice provides sound assurance of voluntariness, "the long-standing test for determining the validity of a guilty plea," *Hill v Lockhart*, 474 US 52, 54, 106 SCt 366, 369 (1985).

[6] *In re Stanton*, 757 A2d at 90.

[7] *In re Stanton*, 757 A2d at 91.

[8] *In re Stanton*, 589 A2d at 426. This federal and DC rule of criminal procedure is intended "to expose the defendant's state of mind on the record through personal interrogation," *McCarthy v United States*, 394 US 459, 467, 89 SCt 1166, 1171 (1969), by the court.

[9] *Matter of Stanton*, 532 A2d 95, 97 (DC 1987).

[10] *Matter of Stanton*, 532 A2d at 97. The interpretation thus originated with the BPR.

[11] *In re Stanton*, 757 A2d at 91, also citing DC Code § 11-2501(a) as "statutory authority."

[12] *In re Stanton*, 757 A2d at 91.

[13] *In re Stanton*, 757 A2d at 91, *In re Stanton*, 682 A2d at 660. Unlike

says, "Our consideration of [BPR] findings and recommendations is similar to our review of administrative agency decisions,"[14] yet respondent does not dispute petitioner's argument that "giving the [BPR] deference is constitutionally infirm because [BPR] proceedings do not offer the same procedural protections as administrative agency proceedings"[15] but admits that the BPR "does not follow the same procedures as District administrative agencies."[16] Respondent says only that the BPR "is not an administrative agency and therefore not governed by the Administrative Procedure Act."[17]

Previous Proceedings

Representing the same client in separate criminal prosecutions, petitioner and lawyer Stephen Bright "disagreed about the advisability of her accepting the

---

members of DC administrative agencies BPR members take no oath to support the US Constitution nor any oath of office nor are they paid from appropriations for their volunteered services. Some BPR members are "not lawyers," DC Bar Rule XI §§ 4(a), 4(e)(4), 5(a).

[14] *In re Stanton*, 757 A2d at 91.

[15] *In re Stanton*, 757 A2d at 91. In truth and fact the BPR by its own Rule 11.3 is not "bound by the provisions or rules of court practice, procedure, pleading, or evidence."

[16] *In re Stanton*, 757 A2d at 91. For example, under BPR Rule 7.14 allegations against disciplinary respondents may not be dismissed for legal insufficiency but under BPR Rule 9.2 allegations by reinstatement petitioners may be dismissed as "insufficient as a matter of law."

[17] *In re Stanton*, 757 A2d at 91. Under the DC Administrative Procedure Act, DC Code §§ 2-501 *et seq*, administrative agencies must make findings "upon each contested issue of fact," *Id*, § 2-509(e), and may not act "without observance of procedure required by law," *Id*, § 2-510(a)(3)(D), or "otherwise not in accordance with law," *Id*, § 2-510(a)(3)(A).

government's plea offer."[18] At the hearing petitioner stated that he had advised the client that Bright's plea bargain was "improvident and unwise."[19] Bright complained to the DC Bar Counsel about petitioner's statement on the plea bargain and Bar Counsel issued an informal admonition explaining to petitioner that

> In issuing this informal admonition . . . we find that the decision whether or not to go to trial must be balanced between the lawful objectives and desires and benefits to one's client and the personal philosophies of the attorney.

When petitioner rejected the admonition as contrary to law Bar Counsel opened formal disciplinary proceedings before the BPR vaguely alleging misconduct "in connection with [petitioner's] failure or refusal to assist [the client] in accepting the government's plea bargain."[20] When a second client facing two separate prosecutions for larceny and drug possession started to enter a guilty plea but stopped because the judge, annoyed because the client had delayed until "[a]fter the jury had been impaneled"[21] for trial in the drug possession case, would not dismiss the larceny case in return for the guilty plea in the drug case as per the government's plea bargain and "the case went

---

[18] *In re Stanton*, 470 A2d at 283. Bright advised the client "to plead guilty in both," *Id* at 284, cases and he would argue for concurrent sentences; however, the judge before whom he arranged the hearing had sentenced the same client recently to consecutive sentences in previous cases.

[19] *In re Stanton*, 470 A2d at 284. The client was sentenced again to consecutive terms as petitioner had predicted.

[20] *In re Stanton*, 470 A2d at 284.

[21] *In re Stanton*, 470 A2d at 274.

to trial"[22] DC Bar Counsel alleged that petitioner had "failed to seek a client's lawful objective"[23] of pleading guilty.

In addition to these allegations DC Bar Counsel opened proceedings in two other cases alleging in one that petitioner "failed to file a bond review motion when requested to do so by his client, failed to communicate in any significant fashion with his client, failed to investigate the facts of his client's case"[24] and alleging in the other that he had "failed to investigate the case."[25]

Petitioner moved to dismiss the allegations, raising the due process claim of fair notice of the vague and overbroad allegations. The BPR would not address petitioner's arguments of vagueness and overbreadth or rule on his motion. The BPR said that procedural due process protections are "inappropriate in the disciplinary system"[26] and that disciplinary cases would not be "decided on motions made before the [fact-finding] hearing"[27] as is common in civil, criminal, or administrative practice.

---

[22] *In re Stanton*, 470 A2d at 274.

[23] *In re Stanton*, 470 A2d at 273. The theory of the allegation was that petitioner should have given the client "assistance in entering his plea," *Id* at 276, in the drug possession case without a dismissal in the larceny case.

[24] *In re Stanton*, 470 A2d at 275.

[25] *In re Stanton*, 470 A2d at 289.

[26] *In re Stanton*, 470 A2d at 285, adding that the determination of whether a disciplinary respondent "was not fairly notified of the charges against him," *Ibid*, would be made after fact-finding on vague or overbroad allegations so that any possible objection based on no fair notice "can be considered together with the factual record in the case," *Ibid*.

[27] *In re Stanton*, 470 A2d at 284.

The BPR found and reported to respondent DC Court of Appeals that petitioner should be suspended because he "arrogates to himself the role of decision maker in his representation of his clients,"[28] "keep[s] his clients largely in the dark about the progress of their cases,"[29] "verbally abused his client or a member of the client's family,"[30] and "does not seem to have the slightest doubt about the correctness of his behavior in overruling his clients' judgments."[31] No actual or even likely wrong, harm, or prejudice to any client was reported but the recommendation was indefinite suspension with the requirement of a petition for reinstatement "to force [petitioner] to justify his readmission to active practice."[32] Respondent DC Court of Appeals summarily adopted the BPR reports as opinions, ignored petitioner's due process defenses as well as his arguments, explanations, and constitutional claims against BPR lawlessness and ordered his suspension from practice as recommended.

In his first reinstatement action petitioner pledged that he "would not in the future interfere with his client's plea"[33] but because he would not pledge that he "would

---

[28] *In re Stanton*, 470 A2d at 278. This reported finding violated the obligation the BPR said petitioner owed to his clients "to pursue their objectives as they see them," *Id* at 276.

[29] *In re Stanton*, 470 A2d at 278. This reported finding was based on the allegation that petitioner "did not discuss the case," *Id* at 273, with one client for "three weeks," *Ibid*, after their initial discussion of the case.

[30] *In re Stanton*, 470 A2d at 278. This reported finding was "not the basis for any disciplinary violation," *Ibid.*

[31] *In re Stanton*, 470 A2d at 279. This reported finding violated the duty of "fidelity to the client's judgment," *Id* at 289.

[32] *In re Stanton*, 470 A2d at 281.

[33] *Matter of Stanton*, 532 A2d at 99, that is, not tell judges hearing guilty pleas about advice to clients not to accept the plea offer.

assume the role of an advocate for a client who desired to plead guilty"[34] respondent ruled that he had not "demonstrated by clear and convincing evidence his fitness to resume the practice of law."[35]

In his second reinstatement action while maintaining "his position that he has done nothing wrong"[36] petitioner "agreed to file bond review motions whenever clients request them, act more diplomatically with clients, and investigate cases more thoroughly"[37] but respondent denied reinstatement, concluding that "nothing has changed with respect to petitioner's recognition of the seriousness of his misconduct,"[38] another of respondent's reinstatement factors, because he "would not personally articulate the guilty plea of a client in court and would not personally take any action to convince a judge of the voluntariness of a guilty plea."[39]

---

[34] ***Matter of Stanton*, 532 A2d at 97.**

[35] ***Matter of Stanton*, 532 A2d at 97. In the first reinstatement action petitioner alleged on respondent's reinstatement factor of "the nature and circumstances of the misconduct for which the attorney was disciplined," *Id* at 96, that he had been "denied due process because of the vagueness and overbreadth of the charges lodged against him," *Ibid*, and that the disciplinary action had "held him accountable *ex post facto* for conduct which no attorney could have foreseen would be deemed violative," *Ibid*, of the disciplinary rules. The BPR ignored and made no findings on these allegations as precluded by "principles of *res judicata*," *Ibid*, and respondent "accepted," *In re Stanton*, 589 A2d at 426, this application of *res judicata*.**

[36] ***In re Stanton*, 589 A2d at 428. On the reinstatement factor of the nature and circumstances of the misconduct respondent again ignored petitioner's "challenge to the fairness of the proceedings leading to his suspension," *Id* at 426, by applying "principles of *res judicata*," *Ibid*.**

[37] ***In re Stanton*, 589 A2d at 430. Petitioner also agreed again "not to inform judges hearing guilty pleas of petitioner's advice to his client not to plead guilty," *Ibid*.**

[38] ***In re Stanton*, 589 A2d at 426.**

[39] ***In re Stanton*, 589 A2d at 426. Respondent also agreed with the BPR**

In his third reinstatement action petitioner "further refined his position"[40] by agreeing "to advocate for acceptance of his client's guilty plea if that is the course his client freely and intelligently chooses."[41] Petitioner recognized "his duty to comply with the rulings of the DC Court of Appeals so long as they remain in force regardless of his view of their apparent wisdom or folly unless a ruling conflicts with a higher [constitutional] duty and compliance causes harm that his conscience cannot countenance or condone."[42] Petitioner testified candidly that "he did not believe that any client in fact would choose to have him be an advocate for guilt."[43] The BPR reported

---

that on respondent's reinstatement factors of present character and present qualifications and competence to practice law "no evidence was introduced concerning petitioner's present character," *Id* at 427, in several hours of testimony and that "much more evidence of his present competence to practice law," *Ibid*, would be required than his testimony and documentary evidence "about his paralegal work, some of which appeared to involve legal research while other aspects consisted of document organization and fact investigation," *Ibid*, as a United States Department of Justice paralegal contractor assisting attorneys of the Civil Division in asbestos litigation.

[40] ***In re Stanton*, 682 A2d at 657.**

[41] ***In re Stanton*, 682 A2d at 657-658. On the reinstatement factor of the nature and circumstances of the misconduct respondent dropped the defense that "principles of *res judicata*" precluded petitioner's allegations that "the disciplinary rules as applied to him constituted . . . an *ex post facto* law," *Id* at 657, when it made the finding that he had "failed to raise the . . . claim in the disciplinary proceeding . . . that led to the suspension," *Ibid*.**

[42] ***In re Stanton*, 682 A2d at 657. Petitioner testified that he could comply in good conscience with respondent's interpretation of the disciplinary rules if "adequately assured that the plea was voluntary," *Ibid*, because the client had freely and intelligently chosen to give him "expressly without any equivocation a clear directive," *Ibid*, to advocate for acceptance of the guilty plea.**

[43] ***In re Stanton*, 682 A2d at 659. Respondent's majority opinion twisted this testimony into a misrepresentation that, "[Petitioner] also**

that this testimony "reflected poorly on . . . [petitioner's] readiness to prevent future misconduct"[44] and the BPR "further concluded that although [petitioner] had presented unrebutted evidence of good character his inability to draw workable distinctions between his philosophical beliefs and his ethical obligations to his clients called into question the [reinstatement] factor concerning character."[45]

In his fourth reinstatement action petitioner again agreed to assume the role of an advocate for the guilty plea of any client who freely and intelligently requests such advocacy and repeated all previous pledges to comply with respondent's interpretations of the disciplinary rules but respondent sustained the BPR dismissal of the petition as "insufficient or defective on its face as a matter of law"[46]

---

stated that no client would ever with proper regard to his interests choose freely and intelligently to plead guilty," *Id* at 657, and used the misrepresentation to conclude that petitioner had not "met his burden of proving fitness with reference to the [reinstatement] criteria focusing on future misconduct," *Id* at 658.

[44] *In re Stanton*, 682 A2d at 658.

[45] *In re Stanton*, 682 A2d at 658. On the reinstatement factor of character respondent emphasized the BPR's "opportunity to consider [petitioner's] testimony at the hearing and to observe his demeanor," *Ibid.* In fact not only did petitioner present "unrebutted evidence of good character" but DC Bar Counsel conceded and stipulated to his good character and his qualifications and competence to practice law but the BPR and respondent disregarded these concessions. At the time petitioner worked as a United States Department of Justice paralegal contractor assisting attorneys of the Land and Natural Resources Division in prosecution and defense of the Love Canal case.

[46] *In re Stanton*, 757 A2d at 89. Had the BPR assumed as stated by its own BPR Rule 9.2 that petitioner would have been "able to establish by clear and convincing evidence all of the material facts set forth," *Ibid*, in his reinstatement petition it would have reported that he had been suspended for *ex post facto* misconduct that neither wronged, harmed, nor prejudiced any client. In sustaining the dismissal respondent said its concern lay solely with petitioner's "ability to act

because "petitioner adamantly believes that he has never engaged in any misconduct."[47] Relying "solely on the assertions contained in the petition"[48] for reinstatement and, of course, the BPR report, respondent refused to consider petitioner's "views as expressed at oral argument"[49] or in briefing.

In the fourth reinstatement action petitioner also again alleged that "giving the [BPR] deference similar to that given administrative agencies is constitutionally infirm because [BPR] proceedings do not offer the same procedural protections as administrative agency

---

in accordance with our disciplinary rules despite personal disagreement with them," *Ibid*, and that his statement that, "The history of the disciplinary actions against petitioner is a series of his efforts to comply with the unconstitutional requirement by constitutional means," *Id* at 89, somehow despite the pledge of constitutional compliance "captures petitioner's inability to accept that regardless of his personal beliefs he must conduct himself in accordance with our interpretation of the disciplinary rules," *Ibid.*

[47] ***In re Stanton*, 757 A2d at 89. Respondent said petitioner would be free to explain in another reinstatement petition "how his position has changed," *Ibid*, on the reinstatement factor of recognition of his misconduct. On the reinstatement factor of the nature and circumstances of the misconduct respondent addressed petitioner's allegations again but this time said not that petitioner had "failed to raise" but that it had "summarily rejected his constitutional arguments . . . in the original disciplinary proceedings . . . that a court should not deprive an attorney of the opportunity to practice his profession on the basis of a determination after the fact that conduct is unethical," *Id* at 90, because application of the disciplinary rules to prohibit what it calls "this manner of deliberate neglect of a client's lawful objectives presents no colorable due process issue," *Ibid*, adding that "the doctrine of *ex post facto* application of law . . . does not pertain to attorney discipline, which is not punitive," *Ibid.***

[48] ***In re Stanton* 757 A2d at 89.**

[49] ***In re Stanton*, 757 A2d at 89. Petitioner was not permitted to present evidence on the reinstatement factors of character and competence as this action was dismissed with no fact-finding.**

proceedings"[50] and respondent for the first time addressed this allegation and did not deny or dispute it but said only that, "While it is true that the [BPR] does not follow the same procedures as District administrative agencies the BPR is not an administrative agency and therefore not governed by the Administrative Procedure Act."[51]

Present Proceedings

The reinstatement petition makes general allegations of BPR lawlessness and specific allegations addressing respondent's reinstatement factors. The nature of petitioner's misconduct is alleged to be *ex post facto* in circumstances where he had no fair notice that "A lawyer who refuses to file a motion . . . after being instructed to do so by his client is in violation of the disciplinary rules,"[52] that to tell a judge hearing a client's guilty plea that he had advised the client not to plead guilty is "a serious violation of the disciplinary rules,"[53] or that he was obliged to take "affirmative action to further his client's desires"[54] by articulating the guilty plea of a client who did not desire to plead guilty when he saw that the judge would not dismiss the larceny case in return for his guilty plea in the drug case.

---

[50] ***In re Stanton*, 757 A2d at 91.**

[51] ***In re Stanton*, 757 A2d at 91. Respondent also said that its "interpretation of the disciplinary rules as they pertain to assisting clients with guilty pleas," *Id* at 90, "override[s] the lawyer's First Amendment interests where the lawyer is expected to give voice in court to the client's decision to plead guilty," *Ibid*, and that "there is no violation of the client's Fifth Amendment privilege," *Id* at 91, of voluntary self-incrimination under the interpretation "once the client, after receiving advice, has chosen to plead guilty," *Ibid.***

[52] ***In re Stanton*, 470 A2d at 286.**

[53] ***In re Stanton*, 470 A2d at 288.**

[54] ***In re Stanton*, 470 A2d at 276.**

The petition alleges that other reported BPR findings that petitioner "failed to communicate in any significant fashion with his client, failed to investigate the facts of his client's case"[55] or "concluded that his client was guilty and failed to investigate the case"[56] consisted of no more than "the worst kind of second guessing or Monday morning quarterbacking"[57] designed to defame petitioner as careless, neglectful, and generally indifferent to client welfare but that the BPR never reported any actual or even likely wrong, harm, or prejudice to any client from petitioner's *ex post facto* misconduct.

On respondent's reinstatement factor of whether he recognizes the seriousness of the misconduct and will prevent future misconduct petitioner alleges his repeated pledges "to file bond review motions whenever clients request them, act more diplomatically with clients, and investigate cases more thoroughly,"[58] "improve and expand case preparation operations where indicated,"[59]

---

[55] *In re Stanton*, 470 A2d at 275. None of these reported "failures by itself . . . amount[ed] to a violation of the disciplinary rules," *Ibid*, because the BPR report failed to show anything of significance not communicated or investigated.

[56] *In re Stanton*, 470 A2d at 289. The finding that petitioner failed "to investigate the case" "within the period provided for filing a motion to suppress," *Id* at 291, even if true would be insignificant as there was no basis for suppression, nor was any reason shown to "examine the torn shirt," *Ibid*, and the report that petitioner "intended," *Id* at 290, but "did not attempt to interview . . . the complaining witness," *Id* at 291, is typical of BPR treachery in twisting and misrepresenting proof of facts.

[57] *In re Stanton*, 470 A2d at 287, *In re Stanton*, 860 A2d 369, 372 (DC 2004), Appendix at 9A.

[58] *In re Stanton*, 589 A2d at 430. These pledges address the findings that he had "refuse[d] to file a motion after being instructed to do so by his client" or "failed to communicate in any significant fashion."

[59] *Matter of Stanton*, 532 A2d at 101. This pledge addresses the findings that he had "failed to investigate" sufficiently.

and "advocate for acceptance of his client's guilty plea if that is the course his client freely and intelligently chooses."[60]

On respondent's reinstatement factor of character petitioner alleges that he always has presented "unrebutted evidence of good character,"[61] that his good character has been conceded in previous reinstatement proceedings, and that his present employer has testified that he is as "a trusted employee whose loyalty and integrity are as unquestioned as his legal and editorial skills."[62]

On respondent's reinstatement factor of competence petitioner alleged that his competence to practice law has been conceded in previous reinstatement proceedings (though the concession was disregarded by the BPR and by respondent) and that since then he has maintained steady employment at "a firm that transcribes depositions, trials, and other legal proceedings for customers that include government agencies, law firms, trade associations, labor unions, and academic institutions

---

[60] *In re Stanton*, 682 A2d at 657-658. Adding to these pledges, "The petition does include a plan which is designed to conform his conduct while preserving and protecting the right to voluntary self-incrimination," *In re Stanton*, 860 A2d at 377, Appendix at 16A, including "careful consultation about plea bargains . . . advice that he will pursue dismissal or acquittal if the client decides not to accept a plea bargain . . . and consultation as to how to announce any decision by the client to accept a plea bargain," *Id* at 377-378, Appendix at 16A. In this plan, "Petitioner asserts that he will advocate for acceptance of a guilty plea," *Id* at 378, Appendix at 16A, if the client adheres to his decision to accept the plea bargain but cannot convince the court that the decision is voluntary. Petitioner emphasized that he while he would answer all questions in consultation with clients in no case would he resort to pressure, persuasion, or any form of undue influence in his role of advisor.

[61] *In re Stanton*, 682 A2d at 658.

[62] *In re Stanton*, 860 A2d at 380, Appendix at 20A.

. . . [as] senior proofreader and editor responsible for oversight to maintain quality control."[63] In an exhibit (an annotated copy of the reinstatement petition) submitted prior to the BPR fact-finding hearing petitioner cited clear and convincing proof of all of his allegations in DC Bar Counsel's admissions and failures to deny and in his and Bar Counsel's exhibits. At the hearing, "All exhibits were admitted without objection."[64]

"Prior to the conclusion of the hearing but after petitioner and Bar Counsel had put on their respective cases the [BPR] advised petitioner of its concern that he had failed to introduce evidence to demonstrate his current good character or to show that his proposed method of handling guilty pleas by clients was workable in practice"[65] and "offered to hold the record open and

---

[63] *In re Stanton*, 860 A2d at 380, Appendix at 20A. Petitioner's employment provides an essential service to the legal profession, which relies heavily on accurate transcriptions of proceedings. According to the testimony of petitioner's employer his "knowledge of legal practice is essential," *Ibid*, Appendix at 20A, to the firm's continued advancement and success.

[64] *In re Stanton*, 860 A2d at 378, Appendix at 17A. DC Bar Counsel's exhibits consisted of copies of previous BPR reports and DC Court of Appeals opinions in the disciplinary actions against petitioner. Included among petitioner's other exhibits were excerpts from a Bar Counsel brief conceding petitioner's character and competence but arguing that petitioner has "steadfastly adhered to the belief that he cannot in good conscience give these clients the representation that the system frequently demands – advocacy for a plea bargain in lieu of trial."

[65] *In re Stanton*, 860 A2d at 378, Appendix at 17A-18A. As in all of petitioner's reinstatement actions DC Bar Counsel put on no adverse evidence other than the exhibits of the previous reports and opinions. On the character factor the BPR found the testimony from petitioner's employer that he is a loyal employee of unquestioned loyalty and integrity "clearly not sufficient," *Id* at 383, Appendix at 26A, because it "did not reflect any awareness . . . of the nature and extent of petitioner's prior misconduct," *Id* at 380, Appendix at 20A.

continue the proceedings in order to allow petitioner to put on additional evidence but petitioner declined this opportunity."[66]

The BPR reported to respondent petitioner's allegations that his misconduct had been "determined to be improper *ex post facto*,"[67] that none "of his clients whose complaints led to his discipline had been wronged, harmed, or prejudiced,"[68] that "the BPR and the court have improperly interpreted the Code of Professional Responsibility to require lawyers to advocate guilty pleas in a manner which is unconstitutional and which invalidates guilty pleas,"[69] and that "BPR practice and procedure are entirely lawless"[70] but made no findings on them. On petitioner's compliance plan the BPR reported that, "The fact that petitioner presented a plan designed to prevent himself from going astray in guilty plea situations does not cure the fact that he still believes he did no wrong."[71] The BPR recommended that the reinstatement

---

[66] ***In re Stanton***, **860 A2d at 378, Appendix at 18A. Petitioner said he would address any remaining concerns about his character or his compliance plan but the BPR insisted that he "present live character evidence,"** ***Id*** **at 380, Appendix at 20A, from other witnesses and evidence other than "his own testimony that this plan of action is plausible and compliant with ethical duties as this jurisdiction has interpreted them . . . from witnesses on the subject of whether petitioner's plan would work in practice,"** ***Id*** **at 379, Appendix at 19A.**

[67] ***In re Stanton***, **860 A2d at 379, Appendix at 18A.**

[68] ***In re Stanton***, **860 A2d at 379, Appendix at 19A.**

[69] ***In re Stanton***, **860 A2d at 377, Appendix at 15A.**

[70] ***In re Stanton***, **860 A2d at 377, Appendix at 15A.**

[71] ***In re Stanton***, **860 A2d at 383, Appendix at 24A-25A. The BPR recognized that the plan "may comply with the requirements for advising clients of their rights as to guilty pleas and assisting them in reviewing guilty pleas,"** ***Ibid***, **Appendix at 25A.**

petition be denied and that any future petition "be viewed with special scrutiny."[72]

Before respondent argued that the BPR is an incompetent, irresponsible, lawless, evil regime that should be reformed as or replaced by a "full-time professional disciplinary fact-finding agency with members sworn to uphold the Constitution of the United States and paid from appropriations like civil officers of administrative agencies of the government."[73] Specifically petitioner argued that (1) the BPR demand for a proffer of character witnesses familiar with the misconduct on which his suspension has been based after he has always presented "unrebutted evidence of good character," DC Bar Counsel has conceded his good character, and his employer has testified to his reputation as "a trusted employee" of "unquestioned" "loyalty and integrity" is a sham and a mockery indicative of BPR lawlessness and that (2) the BPR demand for a proffer of expert testimony on whether the compliance plan that it admits "may comply with the requirements for advising clients as to guilty pleas and assisting them in reviewing guilty pleas" "is workable in practice" is either a confession of incompetence, a cynical

---

[72] ***In re Stanton***, **860 A2d at 384. Such "special scrutiny" will evaluate whether petitioner proffers, "Evidence of present good character to be demonstrated by testimony of identified character witnesses . . . familiar with the misconduct on which petitioner's suspension has been based,"** ***Id*** **at 385, Appendix at 29A, and, "A plan for compliance with applicable rules relating to guilty pleas and . . . testimony by an expert in criminal law practice to demonstrate that such a plan is workable in practice,"** ***Ibid***, **Appendix at 28A.**

[73] ***In re Stanton***, **860 A2d at 370, Appendix at 2A. In this argument petitioner also urged that the orders suspending him from practice be vacated for multiple violations of due process of law. Alternatively, he argued that, if these points were ignored again and the BPR were allowed to continue on its incompetent, lawless, evil course, that he should be reinstated to practice if not restored to pre-suspension status because he had pledged and demonstrated the ability to comply with the DC Bar disciplinary rules as interpreted.**

stall, or both and plainly unnecessary, excessive, irresponsible, oppressive, and very much in the BPR tradition. Petitioner argued that because of his view of his role as a lawyer in assisting clients with guilty pleas and his view of the constitutional repugnance of advocacy for guilty pleas the BPR has imposed an open-ended, unbearable burden of proof.

Respondent reverted to the tactic of the original disciplinary actions against petitioner by summarily adopting the BPR report and mostly ignoring petitioner's claims against it. Respondent did say on the allegations of BPR lawlessness that it has "rejected petitioner's arguments on that score in the past"[74] and "see(s) no reason to address them again."[75] Respondent said the BPR demand for evidentiary proffers to be "viewed with special scrutiny" "has furnished petitioner a road map that he might be well advised to follow should he choose to apply again for reinstatement."[76]

Petitioner requested rehearing, asking why respondent opposes establishment of a full-time, professional disciplinary fact-finding agency bound by rules of law. Respondent made no answer in denying rehearing. Then came this certiorari petition.

ARGUMENT

As petitioner argued to respondent, over the course of the disciplinary campaign against him the lawlessness of

---

[74] ***In re Stanton*, 860 A2d at 370, Appendix at 2A.**

[75] ***In re Stanton*, 860 A2d at 370, Appendix at 2A.**

[76] ***In re Stanton*, 860 A2d at 371, Appendix at 2A.**

the BPR has been documented beyond any doubt of the necessity for its reform or replacement in order to secure due process protections of constitutional rights in DC Bar disciplinary and reinstatement actions. In deference to the BPR respondent DC Court of Appeals denies the established freedom of lawyers to criticize the state of the law and interprets the DC Bar disciplinary rules to require advocacy for guilty pleas, a requirement that works to deny to the accused the rights to freedom from involuntary self-incrimination and to assistance of counsel for defense.

Respondent's Lawless BPR Must Go

By its own rules respondent's BPR is not bound by "rules of court practice, procedure, pleading, or evidence,"[77] and respondent recognizes the fact that the BPR "does not follow the same procedures as District administrative agencies"[78] and does not deny that "giving the [BPR] deference is constitutionally infirm because [BPR] proceedings do not offer the same procedural protections as administrative agency proceedings."[79] The reasons for the BPR's constitutional shortcomings are not difficult to discern.

---

[77] **BPR Rule 11.3. This no-rules provision for BPR proceedings does not reflect the national bar disciplinary model: "Except as otherwise provided in these rules the state rules of civil procedure and the state rules of evidence in civil nonjury matters apply in discipline and disability cases," ABA Center for Professional Responsibility, Model Rules for Disciplinary Enforcement, Rule 18B.**

[78] ***In re Stanton*, 757 A2d at 91.**

[79] ***In re Stanton*, 757 A2d a 91. Thus does respondent's deference to the BPR as if it were similar to an administrative agency defy logic and due process because the BPR "is not an administrative agency and therefore not governed by the Administrative Procedure Act," *Ibid*, nor by rules of court practice, procedure, pleading, or evidence and so does not offer the same protections or follow the same procedures as do administrative agencies of the government.**

Unlike members of DC Government administrative agencies BPR members swear no oath or affirmation to support the Constitution of the United States, receive for their services no payments authorized by appropriation, take official actions at closed meetings, make no meeting transcripts available to the public, publish no notices of intended rulemaking, and afford no opportunities for submission of data or views by those interested or affected by BPR actions. The facts that they are unsworn and unpaid are most significant. Without an oath of office to impose constitutional restraints BPR members feel free to find and report whatever suits their personal opinions, predilections, preferences, and prejudices. Even assuming for them a sincere devotion to truth and justice not found in the disciplinary campaign against petitioner, without payment for their services BPR members not independently wealthy cannot devote the time and attention needed to prepare for and conduct hearings and do adequate research and investigation of legal issues and factual contentions without taking time and resources from their personal legal practices or other occupations of gainful employment. Respondent recently noted that "with any volunteer system some minimal delay can be expected."[80]

With such an inherently inadequately fact-finding agency respondent should "conduct fact-finding *de novo*"[81]

---

[80] ***In re Shepherd***, **DC App 03-BG-1343, 3 March 2005, Opinion at 4 (three-year delay in BPR report).**

[81] ***In re Stanton***, **757 A2d at 91, that is, full review of the record for prejudicial error in fact-finding as well as misapprehension or misapplication of the law. But such review would be a prospect far more daunting than deference for unpaid BPR volunteers, who no doubt would be far more difficult to recruit in that event. The inevitable limitations of volunteerism make it constitutionally inadequate for the disciplinary task. A duly constituted, properly operating, full-time professional disciplinary agency sworn to uphold the Constitution and paid from appropriations is needed if the scope of**

on the record of each contested BPR report to stand by its solemn observation that because DC Bar disciplinary actions "are concerned with property rights of respondent bar members due process safeguards must be observed."[82] Instead respondent defers to BPR findings and recommendations as "entitled to great weight"[83] and sustains BPR constitutional deprivations as if in deference "to an agency's interpretation of the statute which it administers."[84]

In the disciplinary actions against petitioner "procedural due process protections"[85] were first to go as "inappropriate in the disciplinary system."[86] Then lawyers were required to advocate for guilty pleas "to

---

review in disciplinary and reinstatement actions is to be limited or deferential.

[82] *Matter of Thorup*, 432 A2d 1221, 1225 (DC 1981).

[83] *In re Stanton*, 757 A2d at 91, *In re Stanton*, 682 A2d at 660. Respondent was warned early on of the faults of such deference: "I feel very strongly . . . that the basic decisional responsibility for the sanction to be imposed in a disciplinary proceeding should rest upon the judges of a jurisdiction's highest court rather than upon the members of a court-created disciplinary body. I believe this to be particularly true where, as is now the case in the District of Columbia, the disciplinary body includes members who are not lawyers. After all, our [BPR] is not akin to an administrative agency which is presumed to have an expertise which we lack," *Matter of Colson*, 412 A2d 1160, 1175 (DC 1979).

[84] *District of Columbia v Davis*, 685 A2d 389, 393 (DC 1996).

[85] *In re Stanton*, 470 A2d at 285. With the demise of procedural due process protections the BPR could find violations of the disciplinary rules interpreted to require lawyers to pursue client objectives "as they see them," *Id* at 276, under a duty of "fidelity to the client's judgment," *Id* at 289, despite the entitlement "to procedural due process, which includes fair notice of the charge," *In re Ruffalo*, 390 US 544, 550, 88 SCt 1222, 1226 (1968).

[86] *In re Stanton*, 470 A2d at 285.

convince a judge of the voluntariness of a guilty plea"[87] when a client is indecisive regardless of the client's right to voluntary self-incrimination. Then respondent said these new obligations "override the lawyer's First Amendment interests"[88] under the blanket assumption that the client in fact "has chosen to plead guilty"[89] freely and intelligently for ever more. Finally respondent decreed that the *ex post facto* doctrine "does not pertain to attorney discipline, which is not punitive."[90]

Now respondent defers to the BPR demand that petitioner, who has always presented "unrebutted evidence of good character," whose good character was conceded in his third reinstatement action, and whose present employer has testified to his trustworthiness, loyalty, and integrity proffer live character witnesses "familiar with the misconduct on which petitioner's suspension has been based."[91] But there can be no doubt that the BPR would find such evidence insufficient. It would report that the witnesses had an inadequate understanding of the misconduct or were excessively sympathetic to petitioner or for any number of arbitrary reasons failed to offer

---

[87] *In re Stanton*, 589 A2d at 426.

[88] *In re Stanton*, 757 A2d at 90.

[89] *In re Stanton*, 757 A2d at 91.

[90] *In re Stanton*, 757 A2d at 90. The last word on the subject from the Supreme Court of the United States was that attorney discipline in fact "is a punishment or a penalty imposed on the lawyer," *In re Ruffalo*, 390 US at 550, 88 SCt at 1226.

[91] *In re Stanton*, 860 A2d at 385, Appendix at 29A. Respondent reasons that because, "Cross-examination of a character witness with regard to specific acts of misconduct by the individual in question is a quintessential method of testing the foundation of the testimony and the credibility of the witness," *In re Fogel*, 679 A2d 1052, 1056 (DC 1996), petitioner should proffer witnesses to be cross-examined about his misconduct even though there is no factual controversy about his character.

sufficiently convincing testimony. The BPR treatment of the evidence already presented indicates that no additional amount would be enough for the unbearable BPR burden of proof.

Similarly the insistence on "testimony by an expert in criminal law practice"[92] on whether petitioner's plan for compliance with the requirement of advocacy for a client's decision to plead guilty is "workable in practice" is insincere, to say the least. The plan provides for "careful consultation" with the client to decide whether a guilty plea and petitioner's advocacy for it is "the course his client freely and intelligently chooses." Respondent never says how such a plan might not be "workable in practice."[93] Such an outrageously absurd result cannot be reached by due process of law.

In deference to BPR lawlessness respondent has stooped to "judicial dishonesty"[94] most visibly by first finding that petitioner "failed to raise"[95] his fair notice/*ex post facto* legal defense in the disciplinary proceeding that led to his suspension then later in effect confessing that it had "summarily rejected"[96] the arguments he raised based on the defense. Although respondent has left a shameful record of a malicious disciplinary campaign against petitioner in pursuit of the unprecedented and unconstitutional policy to require advocacy for guilty pleas, a policy never before and not yet accepted by any

---

[92] ***In re Stanton*, 860 A2d at 385, Appendix at 28A.**

[93] ***In re Stanton*, 860 A2d at 378, 385, Appendix at 18A, 28A. The plan pursues client objectives "as they see them," *In re Stanton*, 470 A2d at 276, in "fidelity to the client's judgment," *Id* at 289, but not necessarily what DC Bar Counsel says "the system frequently demands – advocacy for a plea bargain in lieu of trial."**

[94] ***In re Stanton*, 757 A2d at 88.**

[95] ***In re Stanton*, 682 A2d at 657.**

[96] ***In re Stanton*, 757 A2d at 90.**

other court, respondent at this point says, "Petitioner has a lot to do to overcome the doubts that exist concerning his good faith, honest desire, and ungrudging ability to fulfill his professional obligations to his clients,"[97] meaning that petitioner has no chance at reinstatement until he explains "how his position has changed" on whether the BPR and respondent "have improperly interpreted the Code of Professional Responsibility to require lawyers to advocate guilty pleas in a manner which is unconstitutional and which invalidates guilty pleas" and on whether "he still believes he did no wrong."

Any Lawyer should be Free to Criticize Respondent's Rules

Respondent says if a reinstatement petitioner "does not acknowledge the seriousness of his or her misconduct it is difficult to be confident that similar misconduct will not occur in the future."[98] Respondent never says, however, why petitioner was wrong when he engaged in "conduct which no attorney could have foreseen would be deemed violative"[99] of the disciplinary rules, nor has respondent

---

[97] *In re Stanton*, 860 A2d at 371, Appendix at 3A.

[98] *In re Stanton*, 860 A2d at 382, Appendix at 24A. Respondent's rigid application of this reinstatement factor does not reflect the national bar disciplinary model that for reinstatement a lawyer must either recognize the wrongfulness and seriousness of the misconduct for which the lawyer was suspended or disbarred or present "good and sufficient reason why the lawyer should nevertheless be reinstated or readmitted," ABA Center for Professional Responsibility, Model Rules for Disciplinary Enforcement, Rule 25E.

[99] *Matter of Stanton*, 532 A2d at 96. Respondent took refuge in "principles of *res judicata*" to evade this question, eventually argued that petitioner "cannot have maintained an objectively founded view that in representing a criminal defendant who desires to plead guilty he is entitled actively to thwart the client's desires or to stand by and allow his client to flounder," *In re Stanton*, 757 A2d at 90, but still cites no authorities or precedents that would have been fair notice that to

shown how any of petitioner's clients were harmed or likely to be harmed by petitioner's alleged "refusal to pursue his clients' lawful objectives in other respects, his neglect of their cases, and his failure to communicate with his clients."[100]

Petitioner was suspended for his view of his role as a lawyer in assisting clients with guilty pleas in criminal prosecutions. Since the suspension respondent's allegation of the "intractability" of petitioner's view has been disproven. Petitioner has "amended his position"[101] and "further refined his position"[102] in a "series of efforts to comply with the unconstitutional requirement by constitutional means."[103] He has presented a detailed compliance plan that respondent admits "may comply with the requirements" but respondent demands in addition that he "make a persuasive evidentiary showing that he acknowledges, appreciates, and disavows all the serious

---

tell a judge hearing a client's guilty plea that he had advised the client not to plead guilty is "a serious violation of the disciplinary rules," *In re Stanton*, 470 A2d at 288, or that he was obliged "to take affirmative action to further his client's desires," *Id* at 276, by articulating a guilty plea in the drug case without a dismissal of the larceny case according to the plea bargain that the judge had set aside.

[100] *In re Stanton*, 860 A2d at 371, Appendix at 3A. By the BPR's own account none of the findings that petitioner "failed to file a bond review when requested to do so by his client, failed to communicate in any significant fashion with his client, failed to investigate the facts of his client's case," *In re Stanton*, 470 A2d at 275, "by itself would amount to a violation of the disciplinary rules," *Ibid.* The finding that petitioner "concluded that his client was guilty and failed to investigate the case," *In re Stanton*, 470 A2d at 289, "within the period provided for filing a motion to suppress," *Id* at 291, even if true would be insignificant as there was no basis for suppression, nor was any reason shown to "examine the torn shirt," *Ibid.*

[101] *In re Stanton*, 682 A2d at 656.

[102] *In re Stanton*, 682 A2d at 657.

[103] *In re Stanton*, 757 A2d at 89.

misconduct for which he was sanctioned"[104] before he had notice of it.

Petitioner has presented good and sufficient reason for not recognizing the wrongfulness or seriousness of the alleged misconduct for which he was suspended. He should not be required to change his mind as well as his conduct. For disciplinary purposes conduct compliant with respondent's interpretations of the rules should suffice "regardless of his view of their apparent wisdom or folly."[105] This argument proceeds from "the proposition that lawyers are free to criticize the state of the law,"[106] that "a lawyer is a person and he too has a constitutional freedom of utterance and may exercise it to castigate courts and their administration of justice."[107]

"When a state regulation implicates First Amendment rights the court must balance those interests

---

[104] *In re Stanton*, 860 A2d at 371, Appendix at 3A. Respondent's demand would be more persuasive if supported by some precedent or authority other than respondent's disciplinary decisions against petitioner.

[105] *In re Stanton*, 682 A2d at 657.

[106] *In re Sawyer*, 360 US 622, 631, 79 SCt 1376, 1380 (1959).

[107] *In re Sawyer*, 360 US at 666, 79 SCt at 1398. Petitioner understands that "lawyers in pending cases [a]re subject to ethical restrictions on speech to which an ordinary citizen would not be," *Gentile v State Bar of Nevada*, 501 US 1030, 1071, 111 SCt 2720, 2743 (1991), and he has pledged to comply with respondent's restrictions by not telling judges of advice to clients not to accept plea bargains but to advocate for a client's decision to plead guilty if that is the course freely and intelligently chosen by the client. Respondent demands more, straightforward uncritical acceptance of the restrictions, in fact a denial of freedom of thought, which is "meaningless without freedom of expression," *In re Sawyer*, 360 US at 666, 79 SCt at 1398, nor should respondent in prolonging petitioner's suspension "rest on a bare assertion that petitioner is unwilling to comply with its regulation. To survive constitutional review [respondent] must build its case on specific evidence of noncompliance," *cf Ibanez v Board of Accountancy*, 512 US 136, 144, 114 SCt 2084, 2089 (1994).

against the state's legitimate interest in regulating the activity in question."[108] Respondent's only legitimate interest in regulating guilty plea practice is to ensure voluntariness, "the long-standing test for determining the validity of a guilty plea,"[109] and so long as petitioner complies with respondent's disciplinary rules while making certain that any client's guilty plea is entered voluntarily his views and beliefs about respondent's rules should be "immune from [BPR] inquisitions designed to lay a foundation for barring [him] from the practice of law."[110] Besides, his views and beliefs about the harm done by advocacy for guilty pleas are supported by a plethora of documentary and anecdotal evidence.

Advocacy for Guilty Pleas should not be Permitted, Let Alone Required

Respondent blithely assumes that "there is no violation of the client's Fifth Amendment privilege once the client, after receiving advice, has chosen to plead guilty. What the rules require is that petitioner advocate for *his client's decision* to plead guilty."[111] Respondent assumes for this requirement that the client has made a voluntary unalterable decision to plead guilty and will have no second thoughts.

Respondent acknowledges, however, that "a defendant may be coerced into entering a plea of guilty for

---

[108] *Gentile v State Bar of Nevada*, 501 US at 1075, 111 SCt at 2745.

[109] *Hill v Lockhart*, 474 US at 54, 106 SCt at 369.

[110] *Baird v State Bar of Arizona*, 401 US 1, 8, 91 SCt 702, 707 (1971).

[111] *In re Stanton*, 757 A2d at 91 (emphasis original). Respondent never explains why if a client has chosen freely and intelligently to plead guilty the lawyer's advocacy would be necessary "to convince a judge of the voluntariness of a guilty plea of a client," *In re Stanton*, 589 A2d at 426.

many reasons not associated with guilt,[112] "systemic pressures criminal defendants feel to plead guilty,"[113] including advocacy for their guilty pleas:

> Because of economic constraints and the nature of the job (he is paid by the state, not the defendant, and there is *always* some conflict of interest in his work) the public defender functions not as an attorney representing a client so much as a broker trying to effect a deal. His ends and the client's are *not* the same. The client wants to get off the hook; the public defender or assigned counsel wants to get the case completed.[114]

---

[112] *In re Stanton*, 589 A2d at 429. Such coercion is predictable where DC Bar Counsel's view that "the decision whether or not to go to trial must be balanced between the lawful objectives and desires and benefits to one's client and the personal philosophies of the attorney" prevails. That "balanced" decision is made by the lawyer, not the client.

[113] *In re Stanton*, 682 A2d at 657. Petitioner's exhibits in the present reinstatement proceedings of DC Bar Counsel briefs that refer to what "the system frequently demands – advocacy for a plea bargain in lieu of trial," also acknowledge such pressures. One of respondent's dissenting opinions describes the lawyer's roles as "both an advisor and an advocate and that often a defense attorney's best advice might be that his client should plead guilty but that if his client decided not to plead guilty the attorney's job would be to act as a zealous advocate," *In re Stanton*, 682 A2d at 659. This description fits the design that "the adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of advocate," *United States v Cronic*, 466 US 648, 656, 104 SCt 2039, 2045 (1984), "to require the prosecution's case to survive the crucible of . . . a true adversarial criminal trial," *Ibid*, not a guilty plea. Respondent's requirement only adds to "systemic pressures" to plead guilty and waive the right to assistance of counsel for advocacy in defense.

[114] BRUCE JACKSON, LAW AND DISORDER: CRIMINAL JUSTICE IN AMERICA, University of Illinois Press (1984) chapter III, page 100

Not only clients of public defenders or assigned lawyers but also rich, famous, and formidable clients confront advocates for their guilty pleas:

> **The billionaire oilman Armand Hammer was swept up in the Watergate net in 1975 charged with trying to disguise a $100,000 personal contribution to the Nixon campaign by giving it under another name. Hammer hired Williams, who set about cutting a deal with the Special Prosecutor's office as he routinely did in these campaign contribution cases. But in court as he stood up to plead to a minor felony the irascible old entrepreneur balked. Hammer wanted to be assured that the sentence would not carry jail time. Williams watched in dismay as the judge threatened to throw out the whole plea bargain Williams had carefully concocted with the prosecutor. Hammer and his lawyers retired to discuss the matter . . . Williams exploded. The shouting was so loud that it could be heard out in the hallway . . . Williams quit the case.[115]**

"Several courts have held or indicated that coercion by an accused's counsel can render a plea involuntary."[116] Petitioner believes these reported cases represent only the

---

(emphases original).

[115] EVAN THOMAS, THE MAN TO SEE: EDWARD BENNETT WILLIAMS, ULTIMATE INSIDER, LEGENDARY TRIAL LAWYER, Simon & Schuster (1991), chapter 28.

[116] *Iaea v Sunn*, 800 F2d 861, 867 (CA9 1986) (citing cases), *United States v Estrada*, 849 F2d 1304 (CA10 1988).

preserved specimens of a vast number of involuntary guilty pleas induced and implemented by advocacy, argument, pressure, persuasion, undue influence, and various coercive measures by lawyers permitted or in respondent's jurisdiction required to assume the role of advocate for findings of guilt. All courts permit the practice but only respondent has gone so far as to require it. Petitioner believes respondent causes great harm by imposing this requirement and he finds slight consolation in his ability to propose a constitutional compliance plan that respondent refuses to find "workable in practice."

CONCLUSIONS

Because respondent's lawless BPR fails to fulfill "the important state obligation to regulate persons who are authorized to practice law,"[117] because respondent has no authority to deny to any lawyer the freedom to criticize the state of the DC Bar disciplinary rules, and because respondent's interpretation of the disciplinary rules to require advocacy for guilty pleas by counsel for the accused in criminal prosecutions serves no legitimate state interest but causes unnecessary harm respondent's order

[117] ***Middlesex County Ethics Committee v Garden State Bar Association et al.***, 457 US 423, 432-433, 102 SCt 2515, 2521-2522 (1982). Respondent won't say why it opposes establishment of a full-time professional disciplinary fact-finding agency bound by rules of law but petitioner in the present proceedings when requesting rehearing suggested two reasons: (1) vanity that makes respondent unwilling to face the facts the BPR lawlessness or (2) a belief that respondent's inherent authority over members of the legal profession practicing in the District is or should be absolute and beyond constitutional restraint.

denying petitioner's reinstatement should be overruled, respondent should be ordered to reform or replace the BPR to secure due process of law in DC Bar disciplinary actions, and respondent's requirement that a lawyer "advocate for his client's decision to plead guilty"[118] should be declared unconstitutional as subversive of the rights to freedom from involuntary self-incrimination and to assistance of counsel for defense.

JOHN STANTON
2101 New Hampshire Ave NW
Washington, DC 20009
202-232-5369
Stanton_John@msn.com

[118] ***In re Stanton*, 757 A2d at 91.**

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 03-BG-767

IN RE JOHN STANTON,
PETITIONER.

On Petition for Reinstatement as a Member of the Bar of the District of Columbia Court of Appeals

(BDN 077-02)

(Argued September 14,2004 Decided October 28,2004)

John Stanton, *pro se.*

Elizabeth A. Herman, Senior Assistant Bar Counsel, with whom *Joyce E. Peters,* Bar Counsel, was on the brief, for the Office of Bar Counsel.

Before RUIZ and GLICKMAN, *Associate Judges,* and NEBEKER, *Senior Judge.**

PER CURIAM: In 1983, we suspended petitioner John Stanton from practicing law in the District of Columbia. *See In re Stanton,* 470 A.2d 272 (D.C. 1983) *(Stanton I); In re Stanton,* 470 A.2d 281 (D.C. 1983) *(Stanton II).* Before us now is petitioner's fifth request for reinstatement.[1] Hearings having been held on that

* After this appeal was argued, Senior Judge Nebeker was drawn to replace Senior Judge Newman, who was a member of this division prior to his recusal. Judge Nebeker has listened to the oral argument on tape.

[1] We denied petitioner's first three requests because we doubted his willingness to conform his conduct to the Rules of Professional Conduct. *See In re Stanton,* 532 A.2d 95 (D.C. 1987) *(Stanton III); In re Stanton,* 589 A.2d 425 (D.C. 1991) *(Stanton IV); In re Stanton,* 682 A.2d 655 (D.C. 1996) *(Stanton V).* We sustained the dismissal of petitioner's fourth request as insufficient on its face. *In re Stanton,* 757 A.2d 87 (D.C. 2000) *(Stanton VI).*

request, the Board on Professional Responsibility recommends that we deny it.

We accept the Board's recommendation of denial for the reasons stated in its report, which is appended to this opinion. As detailed in the Board's report, petitioner has made no serious attempt, despite numerous entreaties and opportunities to do so, to address each of the *Roundtree*[2] factors and thereby demonstrate, by clear and convincing evidence, his fitness to resume practicing law. *See* D.C. Bar R. XI, § 16 (d). In lieu of such a showing, petitioner has elected to advocate that in his words, "the lawless District of Columbia Bar Board on Professional Responsibility should be abolished and replaced by a full-time professional disciplinary fact-finding agency with members sworn to uphold the Constitution of the United States and paid from appropriations like civil officer of administrative agencies of the government." We have rejected petitioner's arguments on that score in the past, *see, e.g., Stanton VI,* 757 A.2d at 91; we see no reason to address them again.

In view of what it terms petitioner's "propensity to pursue reinstatement petitions which he should know fall short of the *Roundtree* requirements," the Board asks us to order that any future petition for reinstatement filed by petitioner shall be invalid on its face if it does not proffer certain specified evidence. Bar Counsel supports the Board's request, which is motivated by a not unfounded concern that otherwise petitioner "may, as soon as he is permitted to do so by D.C. Bar R. XI, § 16 (g), again burden the system with another inadequate petition for reinstatement."

The precise factual proffer that the Board asks us to require of petitioner is not required normally as part of a reinstatement petition. In effect, the Board has furnished petitioner a road map that he might be well advised to follow should he choose to apply again for reinstatement. However, without knowing what other evidence of fitness petitioner might offer, we are loath to make a preemptive determination of the exact evidentiary showing that he will need to make.[3] We do not need to impose such a precondition

---

[2] *In re Roundtree,* 503 A. 2d 1215, 1216-17 (D.C. 1985).

[3] Clearly, though, and at a minimum, petitioner needs to make a persuasive evidentiary showing that, at long last, he acknowledges, appreciates and disavows

for the Board to have the ability to protect the disciplinary system from a frivolous or insufficient petition. As we recently explained in *In re Morrell*, No. 03-BG-1273, slip op. at 7-10 (D.C. October 7,2004), a reinstatement petition is required to proffer clear and convincing evidence pertaining to each of the material factors that bear upon the petitioner's fitness. A petition that fails to contain the requisite factual proffer as to each material issue is subject to dismissal at the outset as insufficient on its face. *See* D.C. Bar Rule XI, § 16 (d); Board Rules 9.1, 9.2; *see also Stanton VI*, 757 A.2d at 89. The Board therefore possesses all the authority it needs to dismiss a factually deficient petition from this or any other petitioner seeking reinstatement.

For the reasons set forth in the Board's Report and Recommendation, John Stanton's petition for reinstatement is hereby denied.

So ordered.

---

all the serious misconduct for which he was sanctioned -- not only his refusal to assist his clients in connection with their guilty pleas but also his refusal to pursue his clients' lawful objectives in other respects, his neglect of their cases, and his failure to communicate with his clients. In addition, petitioner needs to make a substantial evidentiary showing that he is currently competent to practice law and is otherwise fit to be reinstated. Petitioner has a lot to do to overcome the doubts that exist concerning his good faith, honest desire, and ungrudging ability to fulfill his professional obligations to his clients.

APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
JOHN STANTON,	:	Bar Docket No.77-02
	:	
Petitioner.	:	Prior Proceedings:
	:	
	:	No. 83-142 (Newman, C.J.,
	:	Nebeker, J., Mack, J.)
	:	No. M-124-82 (Nebeker, J.,
	:	Ferren, F., Belson, J.)

REPORT AND RECOMMENDATION OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter is before the Board on Professional Responsibility (the "Board") on Petitioner's fifth petition for reinstatement ("Fifth Petition" or "Petition") since being suspended from practice in 1983.[4]

Hearing Committee Number Three, after holding a hearing at which Petitioner testified but produced no other witnesses, issued a comprehensive and well-reasoned report which recommended denial of the petition. Petitioner filed an exception to the Report. *See* Board Rule 13.3.

---

[4] Board Chair Joanne Doddy Fort and Board Member Martin R. Baach, having been members of hearing committees that considered Petitioner's previous petitions for reinstatement, offered to recuse themselves from this proceeding. At oral argument, however, Petitioner stated that he had no objection to their participating in this proceeding and they have therefore participated in the Board's consideration of this matter. *See* Transcript of May 15,2003 Oral Argument ("Arg. Tr.") at 2-3. A copy of the oral argument transcript is appended to this Report and Recommendation.

Petitioner's submissions to the Board and his conduct at oral argument before the Board confirm the correctness of the Hearing Committee's recommendation and, further, demonstrate that Petitioner has decided that he would rather engage in a diatribe against the disciplinary system than take the actions necessary to meet the requirements for readmission. Accordingly, the Board recommends not only that the Petition be denied, but also that the Court should, in its Order entered herein, provide that a future petition by Petitioner shall be "insufficient or defective on its face" under D.C. Bar R. XI, § 16(d) unless it demonstrates that Petitioner has sincerely and effectively addressed the deficiencies in his presentation in support of this Petition and contains proffers of testimony and other evidence to establish Petitioner's present character and competence to return to the practice of law.

We first address the nature and character of Petitioner's misconduct as found by the Board and the Court in the two underlying disciplinary proceedings. Since this is the latest in a series of petitions for reinstatement, we review salient portions of Board Reports and the Court's decisions on the first four petitions. Next, we present findings of fact, made by the Hearing Committee and supplemented by the Board, based upon the instant Petition. Finally, we set out our analysis and recommendation.

I. Nature and Circumstances of the Misconduct

The two disciplinary proceedings that resulted in Petitioner's suspension involved misconduct with respect to four clients. As to each of the four clients, Petitioner was found to have violated two rules of the former District of Columbia Code of Professional Responsibility, Disciplinary Rules 6-101(A)(3) (neglect) and 7-101(A)(1) (intentional failure to seek client's lawful objectives).

Petitioner's misconduct was found to be serious. The complaining clients were named Faison, Johnson, Benjamin, and Wilson. We review each in turn.

Faison. Petitioner's misconduct with regard to client Faison did not involve the issue upon which Petitioner's attention has been focused in his successive reinstatement petitions, *i.e.*, client guilty pleas, but rather consisted of neglect. He failed to file a bond review

motion and failed to take any meaningful action on behalf of his client. The Board's Report summarized:

> Those facts show that in the *Faison* case respondent failed to file a bond review motion when requested to do so by his client; failed to communicate in any significant fashion with his client; failed to investigate the facts of his client's case.

In re Stanton, Bar Docket Nos. 31-81 & 38-81 at 5 (BPR Feb. 15, 1983), *aff'd,* 470 A.2d 272, 275 (D.C. 1983) (*per curiam*) (adopting and appending the Board's Report and Recommendation) .

The Board's conclusion as to Petitioner's failure to investigate was quite specific, not at all in the nature of "second-guessing" or "Monday morning quarterbacking,"[5] as asserted by Petitioner .

> Respondent himself admitted that the government's case against Faison was speculative in nature. Nevertheless respondent made no effort to locate any witnesses helpful to Faison who could have bolstered his case. Respondent compounded the seriousness of his inactivity by refusing to withdraw as Faison's lawyer when notified by Bar Counsel of Faison's complaint against him. To compound matters, respondent refused to take any further action on behalf of Faison after the complaint was filed by Faison. Respondent sought no informal discovery from the prosecutor, initiated no plea negotiations, undertook no investigation, and did not speak to his client except for a brief courthouse cellblock visit when Faison was in court in connection with another case.

In re Stanton, 470 A.2d at 275.

---

[5] *See In re Stanton,* Bar Docket Nos. 180-79,468- 79 & 258-80 at 13 (BPR June 15, 1982), *aff'd,* 470 A.2d 281,287 (D.C. 1983) (per curiam) (adopting and appending the Board Report and Recommendation).

Johnson. Petitioner's misconduct as to client Johnson was different, but "equally disturbing" to the Board. *Id.* at 276. Client Johnson had a "hopeless case on a drug charge." *Id.* Despite the fact that Johnson repeatedly advised Petitioner of his desire to plead guilty, on the trial date:

> [Petitioner] refused in open court to take any affirmative action to further his client's desires in this matter.

Id. The Board found from a review of the transcript that Petitioner "stubbornly refused to give his client even minimum assistance in entering his plea." *Id.* After Johnson showed confusion, the trial judge refused to accept the guilty plea and Johnson proceeded to trial, and was found guilty.[6] *Id.* The Board expressed its view of the seriousness of Petitioner's misconduct:

> Far from offering advice and guidance to the client in order to assist him in achieving his lawful objective, respondent said nothing to his client beyond several times urging him to tell the judge what was on his mind. This conduct falls so far below the standard expected of attorneys in assisting their clients that we have not the slightest hesitation in condemning it as neglect and as a wilful [sic] failure to pursue the client's lawful objectives.
>
> Respondent's conduct embodies a view of the lawyer's role that we simply cannot accept. Respondent's view seems to be that in a case of disagreement between respondent and his client over the proper course of action to follow, the client is on his own in attempting to follow any course not concurred in by respondent. We think it is clear

[6] At the end of the trial, Petitioner was removed as counsel. The jury verdict was later vacated, and Johnson ultimately pled guilty to larceny charges and the drug charges were dropped.

> that, at least as to the fundamental decisions concerning the client's case, it is the respondent's desires, so long as they are lawful, that must control.

Id.

Benjamin. The third disciplinary complaint, involving client Benjamin, charged failure to seek bond review, failure to communicate, and a refusal to assist the client in entering into a government plea bargain. Petitioner was requested twice by his client to seek review of her bond, first by letter from jail and second by telephone. He took no action and Ms. Benjamin remained incarcerated for seventeen days until her son raised the necessary bail money.

Ms. Benjamin had several charges pending, and she was represented by another attorney on one such charge. The U.S. Attorney made a plea offer to Ms. Benjamin. Respondent opposed the plea offer and her other attorney recommended it. After considering the differing advice from her two lawyers, Ms. Benjamin decided to accept the government's plea offer. At the hearing, at which Ms. Benjamin was to plead guilty, Petitioner volunteered to the Court that he had advised her that the settlement was "improvident and unwise" and asked the Court to take this fact into account. *In re Stanton*, 470 A.2d at 284. The Court proceeded to accept the guilty plea. The Board expressed its view of the seriousness of this misconduct as follows:

> Respondent's conduct, which is made out by the most clear and convincing evidence possible -- his own words transcribed in open court -- seems to us to be a serious violation of the Disciplinary Rules. No possible purpose of his client's was served by respondent's spreading his own personal views of the matter on the record after the client had decided to reject his advice. It is not a lawyer's place to seek to vindicate his own views, as opposed to those of his client, before a judge.
>
> . . . .

> Only the wisdom and vigilance of the presiding judge prevented respondent's intemperate behavior from frustrating his client's will. The fact that respondent did not succeed in frustrating his client's attempted plea does not weigh heavily in his favor.
>
> On two separate occasions in the instant case, respondent simply overruled his client's stated views on the grounds that he knew better than the client did.

Id. at 288-89.

Wilson. Petitioner's 1983 discipline also resulted from his representation of client Wilson. The gravamen of the misconduct was neglect, resulting from Petitioner's failure to investigate his client's case. The Board summarized:

> As the Committee pointed out, respondent undertook no investigation or discovery within the period provided for filing a motion to suppress. Since the crime took place at 3:45 a.m. in the morning in an alley, there was a distinct possibility (as respondent himself apparently recognized by his plan to "knock down" the government's case) that there could have been a misidentification. Nevertheless, respondent did not attempt to interview the police officers or the complaining witness; he did not examine the torn shirt to see whether the tear was compatible with the version offered by the witness or by his client; he did not investigate or send someone to investigate the scene of the crime to determine whether lighting at the time of the offense made identification possible.
>
> Respondent made a determination, on his own, that no investigation was necessary because his client was guilty .

Id. at 291.

In making its sanction recommendation, the Board found "that a pattern emerges in Respondent's conduct that is most disturbing." *In re Stanton,* 470 A.2d at 278. The pattern involved the following factors. The Board noted:

> First, Respondent arrogates to himself the role of decision-maker in his representation of his clients.
>
> Second, Respondent's habit of keeping his clients largely in the dark about the progress of their cases is deplorable.
>
> Third, although not the basis for any disciplinary violation in this case, we think that Respondent's arrogant and abusive manner toward his clients is relevant to the issue of sanction.
>
> Fourth, we are impressed by the fact that respondent does not seem to have the slightest doubt about the correctness of his behavior in routinely overruling his clients' judgments. In his arguments in the various hearing committees before which he has appeared and in this Board and in the papers he has filed, respondent has taken an extreme position: namely, that he is entitled to exercise his professional judgment in almost every situation regardless of the views of his client. The result of this extreme view is particularly harsh where respondent does not communicate fully or well with his clients. In these situations, the client has little or no opportunity to make his views known, and when he does, his judgment is overruled by his attorney.

Id. at 278- 79.

II. Previous Petitions for Reinstatement

The Court affirmed the Board's rejection of Petitioner's first petition for reinstatement on October 13, 1987, because Petitioner did not present clear and convincing evidence sufficient to satisfy the five-pronged test elucidated in *In re Roundtree*, 503 A.2d 1215, 1217 (D.C. 1985). *In re Stanton*, 532 A.2d 95, 96-97 (D.C. 1987) (*per curiam*). The Court also ruled that Petitioner could not attack the suspension as unconstitutional due to procedural deficiencies because the doctrine of res judicata barred consideration of this matter where it could have been considered in the original suspension hearings. *Id.* at 96. The Court found that Petitioner had not appreciated the seriousness of his misconduct:

> In our view, it is quite clear that petitioner refuses to acknowledge or appreciate the seriousness of his misconduct. For example, when asked at the hearing whether he had considered taking an ethics course during his suspension, he responded: "No. I have never had a problem knowing what the ethics rules require." And when questioned about his responsibility to a criminal defendant who wishes to plead guilty, petitioner made it clear that he would not act differently from the way he did before. *See Stanton I, supra*, 470 A.2d at 274; *Stanton II, supra*, 470 A.2d at 288. When asked at the hearing whether he would assume the role of an advocate for a client who desired to plead guilty, petitioner answered: "Not until after the plea is accepted. Then you start advocating for the best possible sentence. If the guilty plea is accepted, you lose the case, and the client gets convicted. Who wants to advocate for that kind of result?"

Id. at 97.

In rejecting Petitioner's second petition, *In re Stanton*, 589 A.2d 425 (D.C. 1991) (*per curiam*), the Court concluded that:

> [N]othing has changed with respect to Petitioner's recognition of the seriousness of his misconduct.

Id. at 426. In addition, the Court concurred with the Board's conclusion that Petitioner had not met his burden of proof on the other *Roundtree* factors. It observed that Petitioner had submitted little evidence as to his activities since suspension; that he failed to produce affirmative evidence of his good character; and that he presented minimal evidence of his legal competence. While he listed the results in the cases he tried before his suspension, he did not present testimony about the nature and duration of his paralegal work, or any evidence of steps taken to maintain his competence. The Court quoted the Board's conclusions about the level of evidence required as to present competence to practice law:

> At the time of the hearing (February, 1989), Petitioner had been suspended over four-and-one-half years. Given such a lengthy period of absence from lawyering, Petitioner was obliged to present much more evidence of his present competence to practice law. Testimony from those in a position to evaluate Petitioner's present ability would have been particularly important; evidence of steps the Petitioner has taken to maintain his competence in the law would also have been useful. There was, however, no testimony from anyone for whom Petitioner worked or provided services concerning the level of his competence. Nor did Petitioner himself provide any evidence of steps he has taken to maintain his legal skills.

Id. at 427.

The Court affirmed the Board's rejection of Petitioner's third petition for reinstatement on September 26, 1996. The Court ruled that Petitioner had again not met his burden of proof. *In re Stanton,* 682 A.2d 655 (D.C. 1996). The Court observed that Petitioner did not carry his burden of satisfying the Court that he would not in the future frustrate clients in their attempts to enter guilty pleas. The Court noted:

> Specifically, Stanton states that he has shown his fitness to practice because he "recognizes his duty to comply with the rulings of the D.C. Court of Appeals so long as they remain in force regardless of his view or of their apparent wisdom or folly unless a ruling conflicts with a higher duty, and compliance causes harm that his conscience cannot countenance or condone."

Id. at 657. In his testimony before the Hearing Committee, however, Petitioner had stated his view that no client would ever choose "freely and intelligently" to plead guilty to any charged offense. *Id.* The Court affirmed the Board's conclusion that Petitioner had not demonstrated his readiness to prevent future misconduct. The Court concluded:

> Although Stanton purports to have pledged to comply with this court's disciplinary rules, we cannot have confidence on this record that such rules will not conflict with what he perceives as a "higher duty" or "create [ ] harm that his conscience cannot condone." Stanton's numerous qualifications to his asserted pledge to follow his ethical obligations in this jurisdiction compel our conclusion that he has not met his burden of proving fitness with reference to the *Roundtree* criteria focusing on future misconduct.

Id. at 658.

The Court affirmed the Board's rejection of Petitioner's fourth petition for reinstatement on August 10, 2000. The Board had rejected this petition without a hearing, pursuant to its authority under D.C. Bar R. XI, § 16(d) and Board Rule 9.2, because the petition failed to demonstrate that Petitioner had sufficiently changed his position from that stated in prior petitions; specifically, the petition, on its face, failed to demonstrate that his strongly held views that attorney-assisted guilty pleas are unconstitutional would

not continue to interfere with his discharge of ethical obligations to clients. The Board summarized:

> We have examined Petitioner's current Petition for Reinstatement with care. We do not find in it sufficient departure from his previously stated positions to justify reopening the matter and burdening the disciplinary system with yet another plenary proceeding.

In re Stanton, Bar Docket No.288-98, Order, at 6 (BPR Dec. 18,1998), *aff'd,* 757 A.2d 87 (D.C. 2000) (*per curiam*) (sustaining the Board's order dismissing Petitioner's petition for reinstatement) .

The Board noted in the penultimate paragraph of its dismissal order, "[w]e believe that Petitioner has not yet come to grips with the substance of the misconduct which led to his suspension and to the repeated rejection by the Court and the Board of his efforts to gain reinstatement." *In re Stanton,* 757 A.2d at 88.

The Court agreed, finding the petition insufficient as a matter of law. *Id.* The Court stated:

> Petitioner did not manifest in the instant petition that he recognized the seriousness of the misconduct for which he was disciplined; that is, he did not indicate that he was prepared faithfully to abide by the disciplinary rules applicable to members of the bar, for the breach of which he was sanctioned. If anything, the petition, as well as petitioner's exceptions to the Board's order and his briefs to this court, indicate that petitioner adamantly believes that he has never engaged in any misconduct. For example, he states, "The history of the disciplinary actions against petitioner is a series of his efforts to comply with the unconstitutional requirement by constitutional means." This statement aptly captures petitioner's inability to accept that, regardless of his personal beliefs, he must conduct himself in accordance with

our interpretation of the disciplinary rules as requiring him to fully represent his client, including doing what is necessary to assist (and not to impede) a client who has decided to plead guilty .In light of appellant's failure to make allegations sufficient to satisfy a critical *Roundtree* factor, we must agree with the Board that the instant petition is insufficient as a matter of law. Moreover, a hearing is not necessary because, as we explained in *Stanton IV:*

> [I]f petitioner's understanding of his ethical duty is exactly the same . . . then he has had a full and fair opportunity to offer that understanding in satisfaction of the *Round tree* standard, and he will not be heard -- by a division of the court -- to do so again. Otherwise petitioner could continually apply to the court for reinstatement while adhering to an understanding of his obligation which the court has found contrary to the duties imposed by the canons of ethics on an attorney representing a criminal defendant.

Id. at 89.

III. The Fifth Petition for Reinstatement

The Board makes the following findings based upon its review of Petitioner's Fifth Petition.

The Petition itself consists largely of a reiteration of Petitioner's position that the Board and the Court have improperly interpreted the Code of Professional Responsibility to require lawyers to advocate guilty pleas in a manner which is unconstitutional and which invalidates guilty pleas. Fifth Petition ¶¶ 1-3.

Petitioner also contends in the Petition that "BPR practice and procedure are entirely lawless." *Id.* ¶ 9. In this regard, the

BEST AVAILABLE COPY

Petition asserts that the proceedings in 1983 on which his suspension was based denied him due process rights and were unconstitutional. *Id.* ¶¶ 11-15. The Petition then launches an attack upon the decisions denying his four previous reinstatement petitions, including assertions that the original suspension decision was "clearly erroneous and manifestly unjust" based upon *"ex post facto* misconduct." *Id.* ¶ 27.

The Petition does include a "plan" which is "designed to conform his conduct while preserving and protecting the right to voluntary self-incrimination." *Id.* ¶ 36. This plan consists of a several-paragraph recitation of the manner in which Petitioner proposes to handle guilty pleas. This plan entails "careful consultation . . . about plea bargains offered" *(id.* ¶ 37); advice that he will pursue dismissal or acquittal if the client decides not to accept a plea bargain *(id.* ¶ 38); and consultation as to how to announce any decision by the client to accept a plea bargain. *Id.* ¶ 39. Here, Petitioner states:

> Petitioner will advise the client to speak up in court and announce the decision personally but that petitioner will make the announcement if the client prefers to announce the decision through counsel and petitioner will honor the client's preference. If the client does not make his preference known or does not decide how to announce the decision petitioner will advise the client that he assumes the client reserves the prerogative to himself and that petitioner should continue to pursue the result of dismissal or acquittal until the client announces the decision or asks him to announce the decision or to consult further on it.

Id. ¶ 39. Petitioner asserts that he will advocate for acceptance of a guilty plea. *Id.* ¶ 40. In addition, he states:

> Petitioner will advise clients that decisions to accept or not to accept plea bargains are not irrevocable and that if in fact unsure or uncertain clients may reconsider and change their minds at any time to

> accept plea bargains as long as they remain available or to stand trial with the assistance of petitioner's best efforts in pursuit of the best possible result in any event.

Id. ¶ 41. Petitioner then concludes:

> This detailed plan meets the applicable requirement for reinstatement, advocacy for a client's decision to plead guilty due to aversion to the risks of trial or any number of circumstances, preserves the client's right to voluntary self-incrimination, and demonstrates petitioner's present competence to practice law and ability to comply fully with the unconstitutional requirement by constitutional means.

Id. ¶ 42. Petitioner then recites three "Conclusions/Claims for Relief," *i.e.*, that the orders suspending him should be vacated for "multiple violations of due process"; that the decisions of the Board and the Court requiring advocacy of guilty pleas subvert clients' rights to "voluntary self-incrimination" and unduly limit counsel's right to freedom of expression; and that the Court should revise the Board rules to include "procedural protections and constitutional safeguards of . . . administrative agency proceedings" or "conduct de novo review because limited, deferential review of findings and recommendations reported by a lawless regime must have unconstitutional consequences." *Id.* ¶¶ 43-45. In large part, these allegations reiterate claims made in Petitioner's fourth petition.

IV. Proceedings Before Hearing Committee Three

The hearing on Petitioner's Petition was held on May 15, 2002. Petitioner appeared pro se at the hearing and offered only his own testimony and introduced his exhibits ("PX") 1-10. Bar Counsel introduced her exhibits ("BX") 1-18. All exhibits were admitted without objection.

Prior to the conclusion of the hearing, but after Petitioner and Bar Counsel had put on their respective cases, the Committee

advised Petitioner of its concern that he had failed to introduce evidence to demonstrate his current good character or to show that his proposed method of handling guilty pleas by clients was workable in practice. The Committee offered to hold the record open and continue the proceedings in order to allow Petitioner to put on additional evidence, but Petitioner declined this opportunity. The Hearing Committee commented on this action in its December 27, 2002 Hearing Committee Report ("H.C. Report") as follows:

> Petitioner's self-defeating rejection of this opportunity to close gaps in his case that the Committee candidly brought to his attention signaled to the Committee either that Mr. Stanton enjoyed the process of the pursuit of reinstatement more than he wanted actually to succeed, or alternatively, that he demonstrated extremely poor judgment in representing himself, which effort he would presumably pursue with as much zeal and interest as he would in representing another client.

In re Stanton, Bar Docket No.77-02 at 2 n.2 (H.C. Dec. 27,2002).

V. Findings of Fact

The Board sets out the Hearing Committee's findings of fact here. This recitation includes factual findings made by the Committee in its analysis of the record before it. As below, the Board makes additional findings as authorized by D.C. Bar R. XI, § 4(e)(7) as to Petitioner's conduct following issuance of the Hearing Committee Report.

1. Petitioner acknowledged that the Court had determined his conduct concerning guilty pleas to be misconduct, and he presented a script which he asserts he would follow in order to comply with his obligation to assist clients wishing to enter guilty pleas. H.C. Rep at 9.

2. Petitioner continues to characterize his misconduct as having been determined to be improper *"ex post facto." Id.* at 6.

3. Petitioner denies that any of his clients whose complaints led to his discipline been "wronged, harmed or prejudiced." *Id.*

4. Petitioner did not remember the nature and circumstances of misconduct which he was disciplined other than that involving guilty pleas. *Id.* at 6- 7.

5. Petitioner apparently believes that these other violations were insignificant had been "resolved" in prior petitions. *Id.* at 7.

6. Petitioner characterized prior findings by the Board and the Court concerning negligence in investigation as "second-guessing and Monday morning quarterbacking." *Id.*

7. Based on the foregoing facts, the Hearing Committee concluded that Petitioner has not recognized the seriousness of his misconduct. *Id.* at 8.

8. Petitioner presented evidence that he has been employed steadily since his suspension and there is no evidence of post-suspension legal or financial difficulties. *Id.* at 9.

9. Petitioner has been employed since 1997 as a senior proofreader and editor at a firm that transcribes depositions, trials, and other legal proceedings. *Id.*

10. Petitioner has presented some evidence that demonstrates his understanding of the :court's interpretation of a lawyer's duties relating to advocacy for guilty pleas. Petitioner has pledged to fulfill this role and has devised a plan describing his anticipated actions in plea bargain situations. *Id.*

11. Petitioner failed to present any evidence but his own testimony that this plan of action is plausible and compliant with ethical duties as this jurisdiction has interpreted them, despite a specific request from the Committee to hear from witnesses on the subject of whether petitioner's plan would work in practice. *Id.* at 8-9.

12. Petitioner has not taken any Continuing Legal Education ("CLE") courses to acquaint himself with his duties of advocacy, competence, and diligence. Petitioner indicated the hearing that he sought Bar Counsel's recommendation as to which classes she would deem appropriate to take. While this evidences some effort on his part, it does not constitute effective action showing fitness to practice. *Id.* at 10.

13. The sole piece of evidence of competence or good character that Petitioner offered in his proceeding was the affidavit submitted by Carlton Anderson, a general manager at petitioner's firm. Pet'r Reply Br. at 3. This affidavit states that Petitioner is a "trusted employee" and his loyalty and integrity are "unquestioned." H.C. Report at 12. The Affidavit is quoted in its entirety as follows:

> Since July 1998 I have been general manager of Beta Reporting & Videography Services, a firm that transcribes depositions, trials, and other legal proceedings for customers that include government agencies, law firms, trade associations, labor unions, and academic institutions. During my tenure petitioner John Stanton has held the position of senior proofreader and editor responsible for oversight to maintain quality control. Petitioner's knowledge of legal practice is essential to this firm's continued advancement and success. Petitioner is a trusted employee whose loyalty and integrity are as unquestioned as his legal and editorial skills.
>
> I am available to discuss my personal knowledge with any authorized investigator and may be contacted during regular business hours by phone at 202-638-2400 or in person at my office address 910 17th Street NW, Washington, DC.

PX9.

14. Despite the Committee's offer to hold the record open, Petitioner declined to take the opportunity offered to him to present live character evidence. H.C. Report at 12.

15. The Affidavit of Carlton Anderson did not reflect any awareness by Mr. Anderson of the nature and extent of Petitioner's prior misconduct. *Id.*

16. The Hearing Committee was "not persuaded that Petitioner is presently qualified or competent to practice law." *Id.* at 13.

17. Petitioner's Exhibit 10 is a list of outcomes from all of the criminal jury trials Petitioner has tried. The list shows that Petitioner's trial experience ended in March 1984. *Id.*

18. Petitioner's handling of this reinstatement proceeding reflected poorly on current competence to practice law. In unmistakable language, the Committee expressed desire to hear more evidence on the practicality of Petitioner's plan to comply with advocacy guilty pleas as well as on Petitioner's character and present competence to practice. Despite the Committee's clear desire to hear more evidence, Petitioner refused this offer and added no new evidence to the record. *Id.* at 14-15.

19. Petitioner's "Reply to Bar Counsel's Brief" also evidences a lack of attention to detail. Petitioner cites Bar Counsel's brief stating "[B]ar Counsel argues that petitioner 'must show an understanding' of his misconduct, *meaning he must 'agree* with the Court's interpretation of the ethical requirements.'" Pet'r Reply Br. at 2 (emphasis added). In fact, Bar Counsel's brief asserted quite the opposite: "[P]etitioner must show an understanding *even if he does not agree* with the Court's interpretation of the ethical requirements." Bar Counsel's Br. in Opp'n at 7 (emphasis added).

20. Petitioner failed to adequately prepare himself for his own reinstatement hearing. Petitioner's lack of familiarity with the history of his own suspension and reinstatement hearings indicated that he had not reviewed the record in his own case carefully prior to the hearing. H.C. Report at 15.

VI. Additional Findings By Board

The Board makes the following additional findings of fact based on Petitioner's actions subsequent to the hearing before the Hearing Committee:

21. Petitioner displayed disrespect for the disciplinary system that reveals his failure to acknowledge the seriousness of his misconduct, does not portend well for future conduct if readmitted, and displays a lack of competence in his own representation. For example, Petitioner's Brief to the Board opens with the following statement:

> Worthless as a source of fact finding and useless as a tool for legal analysis, the hearing committee report is a model of incompetence and a study in cynicism and bad faith to be discarded or destroyed.

Pet'r Br. on H.C. Report at 1.

22. As another example, at oral argument before the Board on May 15, 2003 Petitioner commenced his presentation as follows:

> You may find this hard to believe, but in the Hearing Committee report that brings most of you here today, as bad as it is, is probably not the worst that I've ever seen filed against me.

Arg. Tr. at 4.

23. Petitioner ascribed to a distinguished member of the Bar the statement that:

> The typical BPR Hearing Committee consists of two toads and a troglodyte, meaning, no doubt, that only a cynical toady would knowingly participate in such an obviously lawless inquisitorial process.

Id. at 6.

24. Petitioner's argument consisted of a broad-based and irrational assault on the disciplinary system. As one example, Petitioner stated:

> And the BPR disciplinary process is a corruptible one. It's one that has no rules of practice, no rules of procedure, no rules of pleadings, no rules of evidence. Everything's wide open. Anything goes. And the BPR is free to report whatever it wishes with absolute power and with absolute impunity, making it, in fact, a lawless and irresponsible and

> even an evil regime with institutional absurdities that demonstrate the adage or the saying that fact or truth can be stranger than fiction.

Id. at 8.

25. Petitioner refused to heed the numerous requests by Board members that he focus on issues of relevance to his objections to the Hearing Committee Report. *See id.* at 9,13-16.

26. Petitioner declined to address the question of why he failed to take the Hearing Committee's suggestion that he present additional evidence. *Id.* at 14.

27. Petitioner acknowledged that he had not kept up with the sentencing guidelines now being used in federal courts and the D.C. Superior Court. *Id.* at 12.

28. Petitioner also acknowledged that he had not consulted with any criminal law practitioner as to the feasibility of his plan for handling guilty pleas. *Id.*

29. Throughout the oral argument, Petitioner persisted in delivering a previously prepared speech condemning all components of the disciplinary system. When "interrupted" with a substantive question by a Board member, he would dismiss the question as quickly as possible and return to the rest of his speech. *Id.* at 7, 9, 13, 14. This was vexatious conduct which did not appear to reflect a sincere effort to gain readmission to the Bar.

VII. Analysis

The Board agrees with the Hearing Committee that Petitioner failed to carry his burden of proof on any of the *Roundtree* factors. The *Roundtree* factors are: (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) the attorney's recognition of the seriousness of the misconduct; (3) the attorney's post-discipline conduct, including steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law. *In re Roundtree,* 503 A.2d at 1217-18. We treat these factors in turn.

A. Nature and Circumstances of Misconduct

This conduct has been described previously. The record of the disciplinary cases underlying Petitioner's suspension shows serious misconduct in the nature of neglect and failure to pursue clients' lawful objectives. The misconduct was serious, but not so serious as to call for strict application of the *Roundtree* factors. *In re Borders,* 665 A.2d 1381, 1382 (D.C. 1995).

B. Recognition of the Seriousness of the Misconduct

Again, the Hearing Committee found that Petitioner did not present clear and convincing evidence that he recognized the seriousness of his misconduct. We agree with the Hearing Committee in this regard. This *Roundtree* factor has been consistently relied upon by the Court as a predictor of future conduct. If a petitioner does not acknowledge the seriousness of his or her misconduct, it is difficult to be confident that similar misconduct will not occur in the future. Failure to carry the burden on this factor has often been recited as a ground for denial of a reinstatement petition. *In re Molovinsky,* 723 A.2d 406,409 (D.C. 1999) (*per curiam*); *In re Lee,* 706 A.2d 1032, 1035 (D.C. 1998) (*per curiam*); *In re Fogel,* 679 A.2d 1052, 1055 (D.C. 1996). Petitioner is well aware of this factor, since, as set out above, several if not all of his prior petitions were denied in part for his failure to acknowledge the seriousness of his misconduct.

Nonetheless, the instant Petition is very much a reiteration of his continuing refusal to accept the fact that he engaged in misconduct. As the Hearing Committee found, Petitioner continues to characterize his misconduct as having been determined to be improper *"ex post facto,"* and he continues, even in this Petition, to attempt to have the findings of violation vacated.

Petitioner continues to believe that the Court erred in finding violations in respect of any of his conduct. He obsessively persists in seeking to have the underlying disciplinary violations vacated, notwithstanding the fact that he has exhausted every avenue of appeal available to him. The fact that Petitioner presented a plan designed to prevent himself from going astray in guilty plea

situations does not cure the fact that he still believes he did no wrong. His adamant refusal to acknowledge that his personal beliefs as to guilty pleas interfered with his duties as an advocate suggest that he will continue to place his own judgment above the wishes of his clients.

Despite the fact that his misconduct involved serious neglect, in failing to file bond review petitions and in failing to investigate charges against his clients, Petitioner characterizes these findings as based upon "second-guessing" and "Monday morning quarterbacking." *In re Stanton,* 470 A.2d at 287. He barely recalls, much less acknowledges, the seriousness of his neglect and failure to communicate.[7]

C. Petitioner's Post-Discipline Conduct, Including Steps Taken to Remedy Past Wrongs and Prevent Future Ones

Here again, the Hearing Committee found that Petitioner had not carried his burden of proof and we agree. Petitioner set forth in his Petition a script which he presents as his method of dealing with guilty pleas of criminal defendants. This script, if followed, may comply with the requirements for advising clients of their rights as to guilty pleas and assisting them in reviewing guilty pleas,[8] but Petitioner did not put on any evidence that his plan was workable, nor had he consulted with any criminal law practitioner as to the plan's feasibility. He acknowledged that he has not kept up with the sentencing guidelines utilized in criminal cases in the Federal Courts and in the Superior Court nor has he taken any CLE courses. Arg. Tr. at 12, 24.

---

[7] It should be noted that in his petition Petitioner answered the portion of the reinstatement questionnaire requiring him to list the offenses or misconduct upon which his suspension was based as follows: "'[V]iew of his role as a lawyer assisting the accused in criminal prosecutions." Resp. to Reinstatement Questionnaire ¶ 10(a).

[8] We question, however, the accuracy of Petitioner's advice that guilty pleas are not irrevocable decisions, and we question whether Petitioner can necessarily assume that a defendant who does not advise Petitioner as to how the guilty plea should be communicated to the trial judge does not wish to plead guilty .

While he has presented evidence of employment, and there is no evidence of post-suspension legal or financial problems, his work as a senior proofreader in and of itself would not demonstrate any efforts by Petitioner to remedy previous wrongs or prevent future recurrences. Petitioner's failure to take CLE courses has been noted in his prior reinstatement proceedings. Petitioner has had ample opportunity to take CLE courses which would be one type of action which would tend to militate against future recurrences of the misconduct. The fact that he has not taken even this elementary step is reflective of the lack of seriousness in his effort to seek reinstatement.

D. Present Character

Petitioner is required to prove that:

> those traits which led to the petitioner's disbarment no longer exist and, indeed, that petitioner is a changed individual having full appreciation of his mistake and a new determination to adhere to the high standards of integrity and legal competence which this Court requires.

In re Brown, 617 A.2d 194, 199 (D.C. 1992) (quoting *In re Barton,* 432 A.2d 1335, 1336 (Md. 1981). Petitioner failed to produce any substantial evidence on this important element. The Affidavit of Carlton Anderson is clearly not sufficient. Petitioner must be deemed to be aware of the requirement that he present such evidence, because it was an important factor in denial of his second petition for reinstatement. *In re Stanton,* 589 A.2d 425 at 427. The Court has stressed the obvious importance of this factor, and the need for a petitioner to put on live witnesses familiar with the underlying misconduct who can provide credible evidence of a petitioner's present good character . *See also In re Tinsley,* 668 A.2d 833, 838 (D.C. 1995) *(per curiam)* (testimony of two character witnesses insufficient because not familiar with petitioner's misconduct); *In re Fogel,* 679 A.2d at 1056 (same).

It is particularly telling that Petitioner was unwilling -- or unable -- to present witnesses to testify as to his good character after

the Hearing Committee indicated to him its concern that his evidence on this important factor for reinstatement was inadequate and offered to hold the record open in order to satisfy his burden of proof on this issue.

E. Petitioner's Present Qualifications and Competence to Practice Law

The Hearing Committee was not persuaded that Petitioner was presently qualified or competent to practice law. He offered his pledge of future compliance, but he did not demonstrate, either by the nature of his current employment or by efforts to keep abreast of developments of the law, that he is currently competent. Petitioner has not practiced law since 1983, and he has done nothing to prepare himself for practice at this time. As he was reminded in the Court's denial of his second reinstatement petition, the longer the time since he has practiced law, the more evidence is required to demonstrate present competence to practice law. *In re Stanton,* 589 A.2d at 427. Petitioner presented no evidence on this point, notwithstanding his knowledge -- based on the Hearing Committee's unmistakable statements -- that his case was deficient in this regard.

The Hearing Committee was troubled by Petitioner's apparent failure to understand certain important legal concepts. When questioned on the doctrine of *res judicata,* Petitioner indicated his view that the state of a legal issue is unsettled until it is reviewed by the United States Supreme Court. Petitioner's constant misuse of the term "ex post facto" and his reiteration of arguments that have already been rejected many times by the Court suggest a lack of judgment and competence.

Like the Hearing Committee, we draw inferences adverse to Petitioner's qualifications from the way in which he presented his own case in this reinstatement proceeding. It is most significant that he failed or refused to recognize both the opportunity given to him by the Hearing Committee to supplement the record and the devastating impact on his case of his failure to take advantage of that opportunity. Further, the fact that Petitioner continues to seek to have the underlying suspension vacated despite the fact that all avenues of appeal have long since been exhausted; his failure even now to accept the point that it was misconduct for him to seek to thwart his client's effort to plead guilty; and the fact that the oral

argument before the Board was so seriously mishandled, all combine to lead the Board to the conclusion that Petitioner has fallen far short of demonstrating his present competence to practice law.

VIII. Conclusion

For the reasons stated herein, and as presented by the Hearing Committee, the Board recommends that the instant Petition for reinstatement be denied.

In view, further, of the long and tortured history of these proceedings, and Petitioner's propensity to pursue reinstatement petitions which he should know fall short of the *Roundtree* requirements, the Board is concerned that Petitioner may, as soon as he is permitted to do so by D.C. Bar R. XI, § 16(g), again burden the system with another inadequate petition for reinstatement. If he does so, we respectfully submit that the petition should be viewed with special scrutiny to evaluate whether it reflects, as it would need to, significant change from his prior petitions. Accordingly, we submit that the Court should, in its Order entered herein, provide that a future petition by Petitioner shall be deemed to be invalid on its face under D.C. Bar R. XI, § 16(d), unless, in addition to complying with all other aspects of the reinstatement questionnaire, it contains the information specified below. We recite this information because it is not called for by the questionnaire, which must be submitted with a reinstatement petition. *See* Board Rule 9.1.

(a) Evidence that Petitioner has recognized the seriousness of all his misconduct, including the misconduct involving neglect, failure to investigate, and failure to communicate with his clients;

(b) A plan for compliance with applicable rules relating to guilty pleas; and specific evidence, such as testimony by an expert in criminal law practice, to demonstrate that such a plan is workable in practice;

(c) Description of steps taken by Petitioner to assure present competence and to prevent future misconduct, including as examples, CLE courses, work as a paralegal, law clerk, or in some other capacity, establishing that he has maintained and/or renewed his legal skills;

(d) Evidence of present good character, to be demonstrated by testimony of identified character witnesses proffered to be familiar with the misconduct on which Petitioner's suspension has been based.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Timothy J. Bloomfield

Dated: July 23,2003

All members of the Board concur in this Report and Recommendation.

District of Columbia
Court of Appeals

FILED

JAN 11 2005

No. 03-BG- 767

IN RE: JOHN STANTON,

Petitioner .

BDN77-02

BEFORE: Wagner, Chief Judge; **Terry, **Schwelb, Farrell, *Ruiz, Reid, *Glickman, and Washington,Associate Judges; and *Nebeker, Senior Judge

ORDER

On consideration of petitioner's petition for rehearing or rehearing en banc, it

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM.

** Associate Judges Terry and Schwelb did not participate in this matter.